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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 244

LUIS J. NICOLE and KATHLYN M. NICOLE SAURI,
Petitioners,

v.

MERCEDES ORTIZ BERDECIA, DELORES BERDECIA and PRUDENCIO ORTIZ, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

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June 12, 1965

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Kathlyn M. Nicole Sauri, a minor, represented and assisted by her father, Luis J. Nicole, petitioners, pray that a writ of certiorari be issued to review the judgment of the Supreme Court of Puerto Rico entered in the above-entitled case on December 4, 1964.

OPINIONS BELOW

The judgment of the Superior Court of Puerto Rico (R. 13-25) dismissing petitioners' complaint is unreported and is printed in Appendix A hereto, *infra* pp. 1a-12a. The judgment of the Supreme Court of Puerto Rico denying petitioners' petition for review (R. 49-50) is unreported and is printed in Appendix B hereto, *infra* p. 13a.

JURISDICTION

The judgment of the Supreme Court of Puerto Rico sought to be reviewed was entered December 4, 1964 and a motion for reconsideration by petitioners was denied on January 14, 1965 (R. 55). An extension of time until June 12, 1965 was granted for filing the Petition for a Writ of Certiorari.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1258 and Rule 23 of the Rules of this Court to review the judgment of denial of a Petition for Writ of Review entered by the Supreme Court of Puerto Rico.

QUESTIONS PRESENTED

1. Are petitioners entitled to a review by the Supreme Court of Puerto Rico of a decision entered by the Superior Court of Puerto Rico, Ponce Part, in violation of the constitutional right of petitioners to due process of law, in that the said decision was entered without a *scintilla* of evidence to sustain it.

2. If petitioners have a right to such judicial review by the Supreme Court of Puerto Rico, has such right been denied when the said Court summarily entered its denial without argument and without examination of the record and/or transcript of the hearing held below?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

28 U.S.C. Section 1258:

Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

. . . .

(3) By writ of certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under the United States.

Constitution of the United States:

(a) FIFTH AMENDMENT

. . . Nor shall any person . . . be deprived of life, liberty or property without due process of law; . . . ."

(b) FOURTEENTH AMENDMENT

. . . Nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the Commonwealth of Puerto Rico:

Article II, Section 7

. . . No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws.

Puerto Rico Federal Relations Act, 64 Stat. 319, Title 1, L.P.R.A. Section 2, page 158:

The rights, privileges and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union and subject to the provisions of paragraph 1 of Section 2 of Article IV of the Constitution of the United States.

Civil Code of Puerto Rico, Ed. 1930, Par. 4, Section 1204, L.P.R.A. Sect. 1204, equal to Section 3343 Title 31:

In questions relating to the civil status of persons, and in those regarding the validity or nullity of testamentary provisions, the presumption of the res judicata shall be valid against third persons, even if they should not have litigated.

Civil Rights Act, R.S. § 1979, 42 U.S.C. Section 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT

In September, 1962, petitioners filed a complaint for acknowledgment of filiation (R. 6-9) in the Superior Court of Puerto Rico, Ponce Part, in which they alleged that Kathlyn M. Nicole Sauri was the niece of Felix Rafael Sauri Tyrell; that the respondent Mercedes Berdecia was a legitimatized child of the other respondents Prudencio Ortiz and Dolores Berdecia

through their marriage subsequent to her birth and their acknowledgement of her in a baptismal ceremony; and that therefore respondent Mercedes Berdecia was not related by blood to petitioners. The baptismal certificate showing that Mercedes was the child of the other two respondents was received without objection as an exhibit in support of the complaint (R. 28), together with a record of school enrollment to the same effect and the marriage certificate of the respondents Prudencio Ortiz and Dolores Berdecia (R. 29). Petitioners further alleged that respondent Mercedes Berdecia had by an action of filiation filed in 1952 in Civil No. TS-52-114 in the Superior Court of Puerto Rico, Ponce Part, succeeded in establishing that she was the natural child of Felix Rafael Sauri Tyrell but that she had failed to join necessary parties to that action to-wit, her legitimate parents, the other respondents. Therefore, petitioners alleged that the 1952 action was null and void *ab initio* since it commenced after the legitimization of Mercedes as the child of the other two respondents. Petitioners alleged that their interest was to avoid having a family relationship with respondent Mercedes which was not based on blood or lawful acknowledgment.

Respondents filed a motion to dismiss which was denied (R. 10-11), and an answer that urged the court lacked jurisdiction, the issues raised were *res judicata*, and the complaint failed to state a cause of action (R. 12).

The Superior Court of Puerto Rico, Ponce Part, entered a judgment in September, 1964 (R. 13-25) dismissing the complaint on the ground that petitioners lacked standing to sue because they had failed to show an interest that was affected by the action in the other

case—Civil No. TS-52-114 and, in any event, the issues raised by the complaint were *res judicata.*

Petitioners filed with the Supreme Court of Puerto Rico a Petition for Review (R. 1-5) on October 21, 1964, urging that their interest was that their constitutional and statutory rights had been violated and that since petitioners had not been parties to the first action (indeed, the minor petitioner had not been born at the time such action was instituted), the doctrine of *res judicata* was clearly inapplicable under the laws of Puerto Rico (R. 2-3). On December 4, 1964, the Supreme Court of Puerto Rico denied the Petition for Writ of Review as a "triviality" (R. 49) without discussion or opinion.

REASONS FOR GRANTING THIS WRIT

It is clear, as a matter of law, that the laws of Puerto Rico cannot ignore or set aside arbitrarily or capriciously the rights guaranteed by both the federal and state constitutions.

It is clear, as a matter of law, that no interpretation of the statutes of the Commonwealth of Puerto Rico by a court in arbitrary proceedings can create gross injustice by such judgment of its court under color of any statute, custom or usage.

In the instant case, the validity is questioned of Par. 4, Section 1204, 3343 L.P.R.A. Title 31, Civil Code of Puerto Rico, which says:

> "In questions relating to the civil status of persons, and in those regarding the validity or nullity of testamentary provisions, the presumption of the res adjudicata shall be valid against third persons, even if they should not have litigated."

That is, due process of law requires that petitioners have their day in court, that judgment be given after a fair trial, that unimpeached and conclusive evidence on the question at bar which is admitted without objection, as in this case, be given its due weight so that the fundamental essentials granted by the Bill of Rights, both Federal and Puerto Rican, be protected for all citizens, according to a decision under said Par. 4, Sect. 1204, Civil Code, L.P.R.A.

Have the petitioners had their day in Court under the Federal and Puerto Rican Constitutions? The answer must be in the negative. Have the petitioners had a fair trial and the equal protection of the law? The answer must be in the negative. Because the civil statute of the Commonwealth of Puerto Rico in question is construed erroneously, the court has concluded that strangers to an action of filiation are barred by a judgment to the same extent as parties, although they are strangers to the litigation and not even privies to the parties involved. The Supreme Court of Puerto Rico, without any findings of facts on the errors pointed out below, without an opinion, and without even having examined the record of the case in the trial of the Court below, summarily denied the review sought. It must be assumed that the Honorable Supreme Court of Puerto Rico denied review as a matter of law, and without any consideration of the merits of the case.

It is the contention of petitioners that their constitutional right to have their action judged according to due process of law has been violated as a result of the delivery of an arbitrary order and judgment, without a scintilla of evidence to sustain such judgment. To the contrary, the unimpeached documentary evi-

dence points out the unconstitutional construction of said Par. 4, Sect. 1204 Civil Code of Puerto Rico, L.P.R.A. 3343, Title 31, by the Court below.

In the light of the above, not only the right to due process of law has been denied to petitioners, but also their right to judicial review of a clearly arbitrary and capricious judgment of *res judicata* against petitioners not according to law.

Petitioners respectfully submit that this Honorable Court should exercise jurisdiction in the instant petition to declare:

1. That Par. 4, Sect. 1204, Civil Code of Puerto Rico, denying the right to litigate to third persons who have not been parties to an action of filiation, and making them bound by judgment delivered in said actions where they have not been parties or privies of litigants in said actions, violates their right to due process of law and of equal protection of law and does not afford them their right to have their day in court, all in violation of their constitutional rights.

2. That the summary denial by the Supreme Court of Puerto Rico of the Petition for Review without a hearing, making findings of fact or conclusions of law, rendering an opinion or examining the transcript or record before the Superior Court of Puerto Rico, Ponce Part, under the circumstances of this case, constitutes a violation of the minimum standards of due process of law, in that such judicial review to which petitioners herein are entitled has in fact been denied.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 12, 1965